



Federal Communications Commission
Washington, D.C. 20554

March 5, 2013

DA 13-336

Terry E. Estes
Telecommunications Supervisor
East Kentucky Power Cooperative, Inc.
PO Box 707
Winchester, KY 40392-0707

In re: East Kentucky Power Cooperative, Inc.
Requests for Renewal
Call Signs KGI26, WPWE983, WPWE984, WPWE986,
WPWE987, WPWE989, WPWE993, and WPWF646
File Nos. 0005569636-0005569643

Dear Mr. Estes:

On December 24, 2012, East Kentucky Power Cooperative, Inc. ("East Kentucky") filed a waiver request¹ to file late-filed applications² for renewal of license of Microwave/Industrial Business Pool Point to Point Microwave Stations KGI26, WPWE983, WPWE984, WPWE986, WPWE987, WPWE989, WPWE993, and WPWF646. Because East Kentucky filed its Renewal Applications more than thirty days after expiration, East Kentucky requests as part of its applications waiver of Section 1.949(a) of the Commission's Rules³ to grant renewal of its late-filed Renewal Applications.⁴ For the reasons stated below, we deny East Kentucky's Waiver Request and dismiss its late-filed Renewal Applications.

The license for Station KGI26 was last renewed on October 16, 2002, and expired on October 29, 2012.⁵ The licenses for Stations WPWE983, WPWE984, WPWE986, WPWE987, WPWE989, and WPWE993 were issued on November 1, 2002 and expired on November 1, 2012.⁶ The license for Station WPWF646 was issued on November 5, 2002 and expired on November 5, 2012.⁷ Our records indicate that renewal reminder notices were sent to East Kentucky for each of these licenses on August 6, 2012 and August 13, 2012.⁸ Section 1.949(a) of the Commission's Rules requires licensees to file renewal

¹ East Kentucky Power Cooperative, Request for Waiver of Part 1.949, File Nos. 0005569636-0005569643 (filed Dec. 24, 2012) (Waiver Request).

² File Nos. 0005569636-0005569643 (filed Dec. 24, 2012) (Renewal Applications).

³ 47 C.F.R. § 1.949(a).

⁴ Waiver Request.

⁵ File No. 0001051914 (granted Oct. 16, 2002).

⁶ File Nos. 0001001475, 0001001476, 0001001479, 0001001480, 0001001481, 0001001484 (granted Nov. 1, 2002).

⁷ File No. 0001032724 (granted Nov. 5, 2002).

⁸ Renewal Reminder Notices, Ref. Nos. 5421726-5421732 (Aug. 6, 2012), 5425336 (Aug. 13, 2012). The reminder notices were addressed to: Attn: Terry E. Estes, East Kentucky Power Cooperative, Inc., P.O. Box 707, Winchester, KY 40392-0707.

applications no later than the expiration dates of the licenses.⁹ East Kentucky failed to do so, not filing until December 24, 2012,¹⁰ and requesting that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of East Kentucky's late-filed Renewal Applications.¹¹

East Kentucky states that it inadvertently failed to file the renewal in a timely manner because of a recordkeeping error.¹² In addition, it argues that granting a waiver would serve the public interest because the stations provide critical communications links necessary to maintain and safely operate important electrical power distribution facilities.¹³

The Commission's policy regarding reinstatement procedures in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.¹⁴ Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹⁵ In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.¹⁶ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that East Kentucky's Waiver Request should be denied.¹⁷

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.¹⁸ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹⁹ Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. A waiver of the Commission's rules may be granted where the applicant

⁹ Waiver Request.

¹⁰ Renewal Applications.

¹¹ Waiver Request.

¹² *Id.*

¹³ *Id.*

¹⁴ Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

¹⁵ *Id.* at 11486 ¶ 22.

¹⁶ *Id.* at 11485 ¶ 22.

¹⁷ *See, e.g.,* WSYX Licensee, Inc., *Order*, 15 FCC Rcd 19084 (WTB PSPWD 2000) (denying a request for waiver of Section 1.949 of the Commission's Rules to allow submission of late-filed renewal applications after the licenses expired, and dismissing the subject applications).

¹⁸ 47 C.F.R. § 1.949(a).

¹⁹ 47 C.F.R. § 1.955(a)(1).

demonstrates that (1) the underlying purpose of the rule would not be served or would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²⁰

We do not believe that East Kentucky has satisfied either waiver prong. An inadvertent failure to renew a license in a timely manner is not so unique and unusual in itself as to warrant a waiver of the Commission's Rules.²¹ Further, each licensee is solely responsible for knowing the terms of its license and submitting a renewal application to the Commission in a timely manner.²² East Kentucky makes no showing that the underlying purpose of the rule would not be served or would be frustrated by application to East Kentucky in the instant case.

Furthermore, while we note that the stations in question provide critical communications links necessary to maintain and safely operate important electrical power distribution facilities,²³ the nature of those operations, by themselves, does not justify a waiver. If East Kentucky wishes to obtain new regular authorizations for these stations, it may file new, properly coordinated applications.²⁴ If it needs to continue operating the facilities in the meantime, it can seek special temporary authority (STA) pursuant to Section 1.931 of the Commission's Rules.²⁵ In view of the foregoing, we find that grant of East Kentucky's requested waiver is not in the public interest.

²⁰ 47 C.F.R. § 1.925(b)(3).

²¹ See Kenneth S. Vannan, CNG Communications, Inc., *Letter*, 27 FCC Rcd 13597, 13598 (WTB BD 2012); Derek M. Fukunaga, Supervisor, Communications, Hawaiian Electric Company, Inc., *Letter*, 26 FCC Rcd 6712, 6714 (WTB BD 2011); Mr. Roger Given, Vice President, Transmission and Storage Operations, Columbia Gas Transmission Company, *Letter*, 24 FCC Rcd 11769, 11771 (WTB BD 2009); Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998, 11002 ¶ 11 (WTB PSPWD 2000) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

²² *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 n.41 (1991).

²³ Waiver Request.

²⁴ See 47 C.F.R. § 101.103.

²⁵ See 47 C.F.R. § 1.931.

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.925 and 1.949(a) of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.949(a), that the request for waiver of Section 1.949(a) of the Commission's Rules filed December 24, 2012 by East Kentucky Power Cooperative, Inc. IS DENIED, and application File Nos. 0005569636-0005569643 SHALL BE DISMISSED.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau